

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 5, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 113, 3/05/1999; HB 392,
3/05/1999; HJ 3, 3/05/1999
Executive Action: HB 113; HB 392; HJ 3

HEARING ON HB 392

Sponsor: REPRESENTATIVE BILL TASH, HD 34, DILLON

Proponents:

**John Youngberg, Montana Farm Bureau and Chairman of the
Statewide TMDL Board**

Mike Murphy, Montana Water Resources Association

Mark Simonich, Director, Department of Environmental Quality

Carl Schwietzer, Montana Wood Products Association

Patrick Heffernan, Montana Logging Association

John Bloomquist, Montana Stockgrowers Association

Steve Pilcher, City of Billings

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE BILL TASH, HD 34, DILLON, stated **HB 392** expands the advisory role of the Statewide TMDL (Total Maximum Daily Loads) Advisory Group. The purpose of **TMDL** is for compliance with the Federal Clean Water Act. The purpose of the **TMDL** Advisory Group was to guarantee an on the ground application of the information for **TMDL** compliance. The Advisory Group is going well particularly with the inclusion of the Conservation Districts. The bill changes reinforce and extend the **TMDL** Advisory Group will be guaranteed in statute.

Proponents' Testimony:

**John Youngberg, Montana Farm Bureau and Chairman of the
Statewide TMDL Group,** stated it was a daunting task before the Department of Environmental Quality with over 900 streams on the **TMDL** list to review. The **DEQ** was given a strict schedule in the original legislation to set this forward. The Group developed a plan to help the Department prioritize the water bodies on the list. They also provide a layman's prospective to the overall program. This bill was brought forward in order to keep that prospective as they move through the entire process to get the 900+ streams off the list and be sure our water is meeting its beneficial uses. The Group has no wish to micro-manage this project, however.

He also spoke on behalf of **Mike Murphy, Montana Water Resources Association,** who wanted to go on record in support of **HB 392**.

Mark Simonich, Director, Department of Environmental Quality, spoke in support of **HB 392** as per **EXHIBIT(nas50a01)**.

Carl Schwietzer, Montana Wood Products Association, spoke in support of **HB 392** and asked for the committee's support.

Patrick Heffernan, Montana Logging Association, spoke in support of **HB 392**. He has been involved with the TMDL Advisory Group for 18 months and believes it is a very useful forum. Technical progress has been made on a very difficult issue. He urges the committee's support.

John Bloomquist, Montana Stockgrowers Association, stated he felt the Advisory Group would play a significant role in the monitoring phase. He urged support of the bill.

Steve Pilcher, City of Billings, spoke in support of **HB 392**. The continued role of the TMDL Advisory Group, as identified in the bill, will greatly assist **DEQ** in getting through the rest of their responsibilities. He urged the committee's support.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR COLE asked for an update on how many streams have been reviewed. **Mr. Simonich** stated the focus of the past two years has been to get the program up and running. The interim 303D list submitted to EPA had very few changes from the original list. They have until October, 1999, to review and prove sufficient credible data to support every stream on the list. He expects that will cause a variety of streams to fall off the list. If they do fall off the list, that act also requires the Department to go out the next field season to collect data to determine if that was a correct determination. He fully anticipates meeting the October deadline.

SENATOR COLE asked where the program would be in the next few years? **Mr. Simonich** stated in the next two years he would anticipate working through the TMDL Advisory Group to continue to lay out the process for prioritization of streams. They will also work with some of the regional coordinators that have been established in the Department to work with local watershed groups to do the necessary assessments for the **TMDL's**. It won't be just the Department doing that work as they anticipate working with Conservation Districts throughout the state and individual watershed or basin groups developed. That will be the ongoing work for several years.

Closing by Sponsor:

REPRESENTATIVE BILL TASH, HD 34, DILLON, reviewed the history of the **TMDL** legislation in **HB 546** from the '97 session. This is an example of things that do come out of good, comprehensive studies

through the Environmental Quality Council. He urged the committee's support.

EXECUTIVE ACTION ON HB 392

Motion/Vote: SEN. MCCARTHY moved that SB 392 BE CONCURRED IN. Motion carried 11-0 by voice vote. SENATOR COCCHIARELLA will carry to Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 13.2; Comments : None.}

HEARING ON HJ 3

Sponsor: REPRESENTATIVE KARL OHS, HD 33, HARRISON

Proponents:

Steve Wade, Burlington Northern and Santa Fe Railway Company
Anne Hedges, Montana Environmental Information Center

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, presented HJ 3 at the request of the Environmental Quality Council. It requests an EQC study of tax and other financial incentives to encourage voluntary cleanup and redevelopment of contaminated properties within Montana. The EQC Water Policy subcommittee was asked to serve as a state water plan advisory committee during the last interim and as a part of that plan a water policy plan was developed. As a part of that, tax incentives and incentives to encourage redevelopment of contaminated sites came forward. It was concluded the topic was complicated enough that EQC should do further interim study. The bill sets some of the parameters for the workload for the next EQC. He urges the committee's support.

Proponents' Testimony:

Steve Wade, Burlington Northern and Santa Fe Railway Company, spoke in support of HJ 3. It is through studies like this that issues can be defined and solutions arrived at. He urged the committee's support.

Anne Hedges, Montana Environmental Information Center, spoke in support of the resolution. On page 2 of the bill they think it is critical that the only persons who will benefit from this would be people who did not contribute to the contamination. She hopes **EQC** will consider page 2, line 8 where it talks about gaps and disincentives. She said there may also be incentives in those policies to be built upon.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, encouraged the committee's support. He was sure **EQC** would do good work and come back with good information next time.

EXECUTIVE ACTION ON HJ 3

Motion/Vote: **SEN. MCCARTHY** moved that **HJ 3 BE CONCURRED IN.**

Motion carried 11-0 by voice vote. **SENATOR MCCARTHY** will carry to Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 13.2 - 19.2}

HEARING ON HB 113

Sponsor: **REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN**

Proponents:

**Don Vidrine, Chief of the Air & Waste Management Bureau,
Department of Environmental Quality**

John Augustine, Conoco

Anne Hedges, Montana Environmental Information Center

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, stated **HB 113** provides the Department of Environmental Quality with corrective

action order authority under the Montana Hazardous Waste Act. It will also provide **DEQ** an alternate mechanism to address such releases other than existing permitting authority, i.e. through civil action or corrective action orders. It will allow the Department to promulgate rules equivalent to the federal EPA rules which became effective October, 1998, which gave additional flexibility to address site specific conditions as an alternative to the current prescriptive and sometimes incompatible permitting requirements. It will allow the Department to seek delegation from the EPA for revised corrective action rule in maintaining hazardous waste management program that is consistent with the federal program.

Proponents' Testimony:

Don Vidrine, Chief of the Air & Waste Management Bureau, Department of Environmental Quality, spoke in support of the bill as per **EXHIBIT (nas50a02)**.

John Augustine, Conoco, stated since Conoco operates the cleanest refinery in the state and as a fine corporate and environmental citizen, they endorse this bill.

Anne Hedges, Montana Environmental Information Center, spoke in support of the bill. They feel it adds necessary flexibility for the Department. The bill makes sense and they urge the committee's support.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR KEATING noticed the House amended the order of #1 and #2. He questioned the significance of reordering the actions.

REPRESENTATIVE YOUNKIN stated it was not to switch the order but to make them an either/or.

SENATOR GROSFIELD referred to line 11 of the bill "any information". He presumed the information would be analyzed before commencing a civil action. **Mr. Vidrine** stated they looked at the language closely and it came out of the federal statute. The operative word is "the Department determines". There can be all kinds of information that alerts the Department to a concern at a facility. They would need to confirm there is a basis to proceed with the action. **SEN. GROSFIELD** stated it was going into code permanently and was nervous about not putting down some kind of verification standard. He would like "after verification" added to read "the department, after verification, determines". **Mr. Vidrine** understood his concern however a number of other

statutes had been reviewed with similar language. There is no pattern for the Department taking an action that would be arbitrary or capricious. They were concerned if they had anything but equivalent federal language it could be a delegation. **SEN. GROSFIELD** stated he did not feel we should be intimidated by EPA to the point of not being able to change a word if we felt the need to.

Closing by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, stated it is a gratifying day when you have industry, the Department and environmental groups saying this is a good bill. She stated she would not be opposed to an amendment of words such as "after verification" as the Department would have to do that anyway. She encouraged the committee's support.

EXECUTIVE ACTION ON HB 113

Motion: **SEN. MAHLUM** moved that **HB 113 BE CONCURRED IN.**

Motion/Vote: **SEN. GROSFIELD** moved **AMEND HB 113 BY INSERTING "AND VERIFIES" AFTER DEPARTMENT PAGE 1, LINE 11.** Motion carried 10-0 by voice vote.

Motion/Vote: **SEN. GROSFIELD** moved that **HB 113 BE CONCURRED IN AS AMENDED.** Motion carried 10-0 by voice vote. **SENATOR MAHLUM** will carry bill to Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 19.2 - 38; Comments : None.}

SENATOR KEATING questioned if **SB 253, 254 and 255** were no longer necessary because of **CI-75**. **SENATOR GROSFIELD** stated two of the bills were not necessary at all but he was not sure which two because he did not have the bills in front of him. The other two may or may not be necessary. He is still working with the agency and industry representatives to answer the question should the fees be set in statute or by rule? He is hoping industry and the agency will come together on the fee level to be put into statute.

{Tape : 1; Side : A; Approx. Time Counter : 38 - 39.7; Comments : None.}

ADJOURNMENT

Adjournment: 3:50 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas50aad)